SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1966.

No. 1113.

JAN T. BATA, individually and as a representative of JAN A. BATA, Deceased,

Petitioner,

v.

CENTRAL-PENN NATIONAL BANK OF PHILADELPHIA,

and

THOMAS J. BATA,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

PETITIONER'S REPLY TO BRIEF OF RESPONDENT THOMAS J. BATA IN OPPOSITION.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

PETITIONER'S REPLY TO BRIEF OF RESPONDENT THOMAS J. BATA IN OPPOSITION.

Petitioner, Jan T. Bata, respectfully presents this Reply Brief to the Brief in Opposition of the Respondent Thomas J. Bata herein.

The Brief in Opposition of Respondent Thomas J. Bata Presents a Claim That Petitioner Did Not Raise the Federal Question in the Court Below Until His Petition For Reargument to the Pennsylvania Supreme Court.

Respondent is in error in this assertion.

In Paragraph 56 of the Petitioner's Answer and New Matter, Petitioner specifically pleaded, at page 87a of the Record:

> "FIFTY-SIXTH: The judgment requested by the plaintiff would constitute a violation of the rights of the defendant Jan A. Bata under the Treaties between the United States and Brazil, and under the 14th Amendment of the Constitution of the United States, and under the laws of the United States." R. 87a.

The preceding averments of the Answer, Paragraphs Fifty-First to Fifty-Fifth and the total pleadings setting forth the entire circumstances surrounding the worldwide industrial empire, with three hundred million dollar value, at issue for partition herein, all made clear the assertion of this right of due process under the 14th Amendment of the Constitution of the United States, and of the violation thereof.

The Brief of Petitioner as Appellant in the Pennsylvania Supreme Court at page 12 stated as follows:

> "Furthermore, Appellant, as pleaded (R. 86a, 704a), raises the issue that the Lower Court's final order and decree including the mandatory injunction, under all of the facts and circumstances herein, would be a violation of Appellant's rights under the Treaty with Brazil, and the rights of the Appellant under the XIVth Amendment to the Constitution of the United States."

This stand of the Petitioner was maintained throughout the proceedings. This stand was particularly stressed

in the Petition for Reargument because the Opinion of the Supreme Court of Pennsylvania had not directly covered the issue, but had, in Petitioner's view, in its totality violated Petitioner's right of due process under the Fourteenth Amendment of the Constitution of the United States.

Respondent's Reply pleading to Plaintiff's averment, at Paragraph Fifty-Second, Record 131a stated that:

> ". . . but plaintiff denies that there are any treaty or constitutional rights of defendant Jan A. Bata that have any bearing upon the disposition of this action and avers that this contention of defendant was made in the prior litigation and rejected by, among others, the Delaware Supreme Court (170 A. 2d 711, 718) as more fully set forth in Paragraphs One Hundred Sixth and One Hundred Seventh of the New Matter alleged herein."

Respondent not only recognized the Constitutional issue when it was raised below but sought to meet it by invoking the fraudulently obtained judgment of the Court of Delaware. The Delaware decision was one of the decisions which Petitioner averred was obtained by fraud which consisted of:

> 1. The presentation by Respondent's expert witness, as a key material document, of a false and fraudulent Deed of Delivery purporting to be from the Court in Czechoslovakia, the false and fraudulent nature of which was first discovered by Petitioner after the escrow involved herein had been established.
>
> 2. The suppression by the Respondent of the Transcript of the 1942 Conference held by the Respondent with officials of the United States Government, which was discovered and obtained by the Petitioner on June 20th, 1963, after the establishment and partial performance of the escrow involved herein.

3. The suppression of the original Protokol of the Court Commissioner in Czechoslovakia which recorded the proceedings on July 13, 1932, immediately after the death of Thomas A. Bata. This Protokol sustained the position of the Petitioner as to the true facts surrounding the estate of Thomas A. Bata and its administration, as well as the transfer and renunciations made by Thomas J. Bata and his mother.

The decision of the Pennsylvania Supreme Court holds that notwithstanding the averments of fraud in obtaining the judgments in New York and Delaware, the Pennsylvania Court would not examine those judgments, but would follow them completely as *res judicata,* would use their findings to foreclose the Petitioner, and would without trial and without opportunity to examine the Respondent or Respondent's expert witness upon these important newly discovered items of evidence of fraud, and thus without due process, take the Petitioner's property.

Petitioner Respectfully States That the Chronology Presented With Respondent Thomas J. Bata's Brief as Appendix B Is Not a Complete or Accurate Chronology.

For example, the chronology omits completely the decision of the Supreme Court of the Netherlands at The Hague. This decision—unanimous in favor of the Petitioner—was issued in a case commenced by the Respondent. It directly involved the merits of the case. It is the only decision in the extensive litigation initiated by the Respondent that was arrived at on the merits in any jurisdiction that followed civil law and is the only decision in the Highest Court of any country.

It is completely in favor of the Petitioner on the merits. It is reported at R. 611a.

CONCLUSION.

It is respectfully submitted that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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